



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion No. 07-04-005

Absent a waiver, a public employee must not hold any employment that would impair that employee's impartiality or independence of judgment. An employee of the Housing and Opportunities Commission (HOC)¹ asks if she can seek appointment as a member of the Montgomery County Planning Board of the Maryland-National Park and Planning Commission (the Planning Board). The Commission concludes that she could hold outside employment as a member of the Planning Board so long as she does not represent HOC in any matter before the Planning Board. Neither could she work on any HOC matter where the Planning Board is a party to that matter.

The Housing Opportunities Commission

HOC's mission is to provide affordable housing and supportive services. It administers the two major federal housing programs for low income individuals and families, public housing and the housing voucher program. In addition, HOC owns and manages more than 6,000 other housing units. HOC provides support services to its residents and clients. In other activities, HOC uses proceeds of bond sales to provide financing for developers of multi-family housing and mortgages to first time homebuyers. HOC also manages and renovates its own properties and develops multi-family housing projects.

The requestor works at HOC in an office that provides the agency's government relations, involving legislative and policy matters at the local, state and federal levels. The office also responds to inquiries from public officials about HOC actions. The office is responsible for the agency's press and community relations efforts and its publications. All division directors, as members of HOC's Executive Staff, are also responsible for overall guidance of the agency.

The Planning Board

The Planning Board advises the County Council on land use planning and community planning. Among its duties are preparing master plans, providing recommendations on amendments to zoning law and implementing the development review process. Some of its other duties include advising the County Council on the planning implications of the capital facility

¹ HOC employees are "public employees" subject to the County's ethics law. §§ 19A-4(m)(2) & (a)(3).

plans of County Government, Montgomery College, WSSC and Montgomery County Public Schools. The Planning Board also sits as the Park Commission, responsible for the management and development of the park system.

Interaction between HOC and Planning Board

Neither HOC nor the Planning Board are part of Montgomery County Government. Both are created by state law. The two agencies work together on a few matters, most regularly on the Alternative Review Committee to review developer requests for exemptions from the requirements of the Moderately Priced Dwelling Unit Program (MPDU). Membership on that committee includes the Director of the Montgomery County Department of Housing and Community Affairs, the Planning Director of the Planning Board, and the Executive Director of HOC. The requestor is not a member of that committee.

In addition, HOC appears before the Planning Board for development approval, but very rarely. HOC has asked for approvals twice in the last three years. HOC sometimes participates in master planning efforts in a technical assistance capacity. At the present time, HOC as an agency is represented on the committee working on the White Flint Master Plan and also on the committee working on the Germantown Master Plan.

There is no financial connection between HOC and the Planning Board. As state chartered agencies, HOC and MNCPPC are equivalent entities. Neither manages or funds the other.

Analysis

Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not hold any employment relationship that would impair the impartiality and independence of judgment of the public employee. § 19A-12(b)(2).² The Commission concludes that if the Council appointed the requestor to the Planning Board, her impartiality and independence of judgment as an HOC employee would be impaired with regard to matters where the Planning Board is a party to the matter. In those matters, the requestor would have a potential conflict between her duty to the County and her duty to the Planning Board. Thus, the requestor could not represent HOC in any matter before her outside employer—the Planning Board. Neither could she work on any HOC matter where the Planning Board is a party to that matter.

The requestor recognizes that she must recuse herself as a Planning Board member in any matter where HOC appears before her as a party. But any such recusal would arise as a requirement of ethics rules that apply to Planning Board members rather than the County's ethics

² The Planning Board position is a paid position. Thus it falls within the definition of employment.

law.³ The requestor should consult those rules and the State Ethics Commission, as necessary.

In reaching this decision the Commission has relied upon the facts as presented by the requestor.

FOR THE COMMISSION:



April 18, 2007

Date

Richard N. Reback, Chair

³ Planning Board members are subject to the State ethics law in addition to rules promulgated by the Board itself. These latter rules are available at http://www.mcparkandplanning.org/board/documents/rules_procedure.pdf.